

## Office of Personnel Management

## § 838.722

the basic employee death benefit as defined in § 843.102 of this chapter.

[57 FR 33574, July 29, 1992, as amended at 58 FR 52882, Oct. 13, 1993]

### APPLICATION AND PROCESSING PROCEDURES

#### § 838.721 Application requirements.

(a)(1) A former spouse (personally or through a representative) must apply in writing to be eligible for a former spouse survivor annuity based on a court order acceptable for processing. No special form is required to give OPM notice of the court order.

(2) OPM may require an additional application after the death of the employee, separated employee, or retiree. This additional application will be on a form prescribed by OPM.

(b)(1) The application letter under paragraph (a)(1) of this section must be accompanied by—

- (i) A certified copy of the court order;
- (ii) A certification from the former spouse or the former spouse's representative that the court order is currently in force and has not been amended, superseded, or set aside;
- (iii) Information sufficient for OPM to identify the employee or retiree, such as his or her full name, CSRS or FERS claim number, date of birth, and social security number;
- (iv) The current mailing address of the former spouse;
- (v) If the employee has not retired or died, the mailing address of the employee; and
- (vi) A statement in the form prescribed by OPM certifying—

(A) That the former spouse has not remarried before age 55;

(B) That the former spouse will notify OPM within 15 calendar days of the occurrence of any remarriage before age 55; and

(C) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage before age 55.

(2) OPM may subsequently require recertification of the statements required by this paragraph.

#### § 838.722 OPM action on receipt of a court order acceptable for processing.

(a) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity based on the service of a living retiree, OPM will inform—

- (1) The former spouse—
  - (i) That the court order is acceptable for processing;
  - (ii) Of the date on which OPM received the court order; and
  - (iii) Of the present amount of the monthly former spouse survivor annuity if the retiree were to die immediately and the formula OPM used to compute the monthly benefit; and

- (2) The retiree—
  - (i) That the former spouse has applied for benefits under this subpart;
  - (ii) That the court order is acceptable for processing and that OPM must comply with the court order;
  - (iii) Of the date on which OPM received the court order;
  - (iv) Of the amount and commencing date of the reduction in the retiree's annuity;
  - (v) Of the present amount of the monthly former spouse survivor annuity if the retiree were to die immediately and the formula OPM used to compute the amount of the former spouse survivor annuity; and
  - (vi) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse.

(b) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity, but the employee, separated employee, or retiree has died, OPM will inform—

- (1) The former spouse—
  - (i) That the court order is acceptable for processing;
  - (ii) Of the date on which OPM received the court order, the date on which the former spouse's benefit will begin to accrue, and if known the date on which OPM will commence payment under the court order; and
  - (iii) Of the amount on the monthly former spouse survivor annuity and the formula OPM used to compute the former spouse survivor annuity.

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(2) Anyone whom OPM knows will be adversely affected by the court order—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and that OPM must comply with the court order;

(iii) Of the date on which OPM received the court order;

(iv) How the court order may adversely affect him or her; and

(v) That, if he or she contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse.

(c) If OPM receives a court order acceptable for processing that awards a former spouse survivor annuity and the employee or separated employee has not retired or died, OPM will attempt to inform—

(1) The former spouse—

(i) That the court order is acceptable for processing;

(ii) To the extent possible, the formula that OPM will use to compute the former spouse survivor annuity (including the FERS basic employee death benefit as defined in §843.102 of this chapter, if applicable); and

(iii) That, if he or she disagrees with the formula, he or she must obtain, and submit to OPM, an amended court order clarifying the amount before the employee or separated employee retires or dies; and

(2) The employee or separated employee—

(i) That the former spouse has applied for benefits under this subpart;

(ii) That the court order is acceptable for processing and the OPM must comply with the court order;

(iii) To the extent possible, the formula that OPM will use to compute the former spouse survivor annuity (including the FERS basic employee death benefit as defined in §843.102 of this chapter, if applicable); and

(iv) That, if he or she—

(A) Contests the validity of the court order, he or she must obtain, and submit to OPM, a court order invalidating the court order submitted by the former spouse; or

(B) Disagrees with the formula, he or she must obtain, and submit to OPM,

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an amended court order clarifying the amount before he or she retires or dies.

(d) The failure of OPM to provide, or of the employee, separated employee, or retiree, the former spouse, or anyone else to receive, the information specified in this section does not affect—

(1) The validity of payment under the court order; or

(2) The commencing date of the reduction in the employee annuity or the commencing date of the former spouse's entitlement as determined under §838.731.

[57 FR 33574, July 29, 1992, as amended at 58 FR 43493, Aug. 17, 1993]

### § 838.723 OPM action on receipt of a court order not acceptable for processing.

If OPM receives an application from a former spouse not based on a court order acceptable for processing, OPM will inform the former spouse that OPM cannot approve the application and provide the specific reason(s) for disapproving the application. Examples of reasons for disapproving an application include that the order does not meet the definition of court order in §838.103 or does not meet one or more of the requirements of subpart H of this part.

### § 838.724 Contesting the validity of court orders.

(a) An employee, retiree or person adversely affected by a court order who alleges that a court order is invalid must prove the invalidity of the court order by submitting to OPM a court order that—

(1) Declares invalid the court order submitted by the former spouse; or

(2) Sets aside the court order submitted by the former spouse.

(b) OPM must honor a court order acceptable for processing that appears to be valid and that the former spouse has certified is currently in force and has not been amended, superseded, or set aside, until the employee, separated employee, retiree, or person adversely affected by the court order submits to OPM a court order described in paragraph (a) of this section or, if issued before the retirement or death of the employee or separated employee, a court